

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE OUTPATIENT MEDICAL
CENTER EMPLOYEE ANTITRUST
LITIGATION

Civil Action No. 1:21-cv-00305

Honorable Andrea R. Wood

**Defendant Hayek's Limited Joinder of Co-Defendants'
Motion to Dismiss for Failure to State a Claim and Lack of Standing**

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Andrew Hayek (“Hayek”), by and through undersigned counsel, respectfully moves this Court for an order dismissing the Consolidated Amended Class Action Complaint (“Complaint”) (ECF 57) for failure to state a claim upon which relief can be granted. In support of his motion, Hayek joins—in part—the Motion to Dismiss filed by defendants Surgical Care Affiliates, LLC, SCAI Holdings, LLC, UnitedHealth Group Incorporated, DaVita Healthcare Partners, Inc., and Kent Thiry (“Co-Defendants’ Motion”) (ECF 75) on the basis stated in Section II—“The Complaint Fails to Plead an Overarching Conspiracy”—of the Memorandum in Support of Motion to Dismiss (“Co-Defendants’ Memorandum”) (ECF 76, pp. 15-18). In support of his motion, Hayek states as follows:

1. On August 9, 2021, plaintiffs Scott Keech and Allen Spradling filed their Complaint naming as defendants Andrew Hayek and nine other entities and persons.
2. Plaintiffs allege a single “overarching conspiracy” between and among all defendants. *See* Complaint, ¶ 114.

3. For the reasons stated in Co-Defendants' Motion and Memorandum, Plaintiffs' Complaint fails to state a claim based on the alleged "overarching conspiracy" that they plead.

Hayek takes no position on the other sections of the Co-Defendants' Memorandum and reserves all rights.

WHEREFORE, for the reasons stated herein and in Co-Defendants' Memorandum (Section II), Defendant Andrew Hayek respectfully requests that this Court dismiss the Complaint and seeks any and all further relief deemed to be just and equitable.

Dated: October 18, 2021

Respectfully submitted,

/s/ Jeffrey C. Bank

Jeffrey C. Bank (*pro hac vice*)
WILSON SONSINI GOODRICH & ROSATI, P.C.
1700 K Street NW
Washington, DC 20006
Tel: (212) 497-7761
jbank@wsgr.com

Brian J. Smith
K&L Gates LLP
70 W. Madison St., Suite 3300
Chicago, Illinois 60602
Tel: (312) 372-1121
brian.j.smith@klgates.com

Counsel for Defendant Andrew Hayek

CERTIFICATE OF SERVICE

I hereby certify that on October 18, 2021, a true and correct copy of the foregoing document was electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Brian J. Smith

Brian J. Smith
K&L Gates LLP
70 W. Madison St., Suite 3300
Chicago, IL 60602
Tel: (312) 372-1121
brian.j.smith@klgates.com